

D8E0SARS Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

13 CR 214

SEYED AMIN GHORASHI
SARVESTANI,

Defendant.

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New York, N.Y.
August 14, 2013
10:51 A.M.

Before:

HON. PAUL G. GARDEPHE,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York

RACHEL PETER KOVNER
Assistant United States Attorney

WILLIAM F. COFFIELD
WILLIAM SILVERMAN
Attorneys for Defendant

Present: Agent Brian Surek

Mamad Shirazi, Farsi Interpreter

(In open court; defendant present)

THE DEPUTY CLERK: Call the case of United States v. Sarvestani.

Government ready?

MS. KOVNER: Yes, your Honor, good morning. Rachel Kovner, for the government. And with me at counsel table is Brian Surek of the FBI.

THE DEPUTY CLERK: Defendant?

MR. COFFIELD: Bill Coffield, with Bill Silverman, on behalf of the defendant, Seyed Amin Ghorashi Sarvestani.

THE COURT: All right. This matter is on my calendar for purposes of sentencing.

In preparation for sentencing, I have read the presentence report dated August 7th, 2013. And I have read the defense submission dated July 31st, along with numerous letters from Mr. Sarvestani's family, business associates, employees, and friends. And all of the other exhibits submitted by the defense.

I have also read government's sentencing memorandum dated August 7th.

Who will be speaking on behalf of the defendant, is it Mr. Coffield?

MR. COFFIELD: I will, your Honor.

THE COURT: Mr Coffield, have you read the presentence report and its recommendation and discussed it with Mr.

1 Sarvestani?

2 MR. COFFIELD: Yes, we have, your Honor.

3 THE COURT: And Mr. Sarvestani, have you read the
4 presentence report and discussed it with your attorney?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Coffield, do you have any objections
7 to the factual portions of the presentence report?

8 MR. COFFIELD: No, none that are not already noted in
9 the report itself, your Honor.

10 THE COURT: All right.

11 Does the government have any objections to the factual
12 portions of the presentence report?

13 MS. KOVNER: No, your Honor.

14 THE COURT: Then I hereby adopt the findings of fact
15 set forth in the presentence report.

16 Although I'm not required to impose sentence in
17 accordance with the Sentencing Guidelines, I am required to
18 consider the recommended range in imposing sentence.

19 Here, the probation department determined that Mr.
20 Sarvestani's base offense level is 26, two more levels were
21 added because the defendant was an organizer, leader, manager,
22 or supervisor of the criminal activity. He received a
23 three-level reduction for acceptance of responsibility,
24 resulting in a final offense level of 25.

25 Mr. Sarvestani has no criminal record. Therefore he

1 falls in criminal history category I, offense level 25.

2 Criminal history category I yields a recommended
3 sentencing range of 57 to 71 months imprisonment. However,
4 because the crime to which the defendant pleaded guilty carries
5 a statutory maximum of five years, the applicable range here is
6 57 to 60 months imprisonment.

7 Mr. Coffield, any objections to the guidelines
8 calculation set forth in the presentence report?

9 MR. COFFIELD: No, your Honor.

10 THE COURT: Ms. Kovner, does the government have any
11 objections to the guidelines calculations set forth in the
12 presentence report?

13 MS. KOVNER: No, your Honor.

14 THE COURT: Based on my independent evaluation of the
15 sentencing guidelines, I accept the calculations set forth in
16 the presentence report. Accordingly, I find that the offense
17 level is 25, the criminal history category is 1, and the
18 recommended sentencing range is 57 to 60 months imprisonment.

19 Before I ask counsel to address the sentencing issues
20 here, I want to raise a couple of issues that I want to be sure
21 you address.

22 First, I understand that the equipment at issue
23 includes equipment that was designed for use in positioning,
24 monitoring, and controlling satellites, and satellite antennae.
25 And defense asserts that this equipment may now be lawfully

1 exported to Iran as a result of a May 13th, 2013 change in
2 regulation. Citing the defense brief at 20 and 23.

3 The government says that it would be illegal, today,
4 to export this equipment to Iran. Citing the government brief
5 at 9.

6 Having read the regulation, it appears to me that the
7 government has the better of the argument. I want both sides
8 to address this issue in their comments.

9 The second issue concerns the amount of prohibited
10 merchandise the defendant caused to be shipped to Iran. The
11 government says that the defendant's companies did "millions of
12 dollars of business transactions in Iran, and that sales of
13 U.S. made goods were a substantial part of that business."
14 Citing the government brief at 4, which in turn relies on the
15 presentence report, paragraphs 15 to 16.

16 The defense states that the defendant derived only
17 \$54,000. From the offense defense brief at 6.

18 I understand that the \$54,000 was the defendant's
19 profit on the transactions, but I want to know whether the
20 defense disputes the gross value of the transactions that the
21 government references.

22 Finally, the defendant has cited a great deal of law
23 involving sentencing determinations in other cases involving
24 violations of the export regulations. And I invite the
25 government to address the defendant's submission in this

1 regard, which is exhibit 10 to the defendant's sentencing
2 memorandum.

3 With that background, Mr. Coffield, I'll hear you as
4 to an appropriate sentence.

5 MR. COFFIELD: Thank you, your Honor. May it please
6 the Court.

7 Your Honor, I -- Mr. Silverman and I have, over the
8 course of time discussed, at least in our collective
9 experience, how unique this particular case is. And there are
10 several factors that make it unique.

11 One, that the offense conduct is now legal. I
12 understand that your Honor wants us to address that, and I
13 will.

14 The other unique aspect is the extraordinary family
15 circumstances that this case presents. Also, Mr. Silverman and
16 I have been talking. We have never seen the kind of outpouring
17 of support as we have in this case. And it's not just a lot of
18 letters. It is the substance of these letters. I think it is
19 the substance of these letters that highlight the most unique
20 thing about this case. And that's this man, here, that's Amin
21 Sarvestani. He is what jumps out from these letters.

22 This is a man who treats every human being with
23 dignity and respect, who helps his fellow human being without
24 looking for recognition, and is really a citizen of the world,
25 and treats everybody, everybody, as his equal, and reaches out

1 to people in need.

2 The concern that he has had, and what has caused him
3 sleepless nights for 10-plus months that he has been
4 incarcerated, has been his wife and child. That has been his
5 primary concern. And we cannot understate the impact, of his
6 continued incarceration, on his wife and child. And I think
7 the PSR appropriately addresses that point.

8 The government has acknowledged the defendant's
9 meetings with them, his efforts to assist them, his positive
10 conduct, and acceptance of responsibility.

11 Following the 3553 factors, your Honor, there are
12 several factors that, in and of themselves, warrant time
13 served. But, taken collectively, I think they overwhelmingly
14 support time served as an appropriate sentence.

15 We have a man with an exemplary background, as has
16 been stated again and again in all of these letters. We have
17 an offense conduct that is now legal. And I believe, your
18 Honor, that there is no question the vast majority of the
19 products that are at issue here are now legal. What the
20 government points to is the beacon receivers. They also make a
21 reference, in the footnote that they dropped, to a tracking
22 controller. There is no evidence that that tracking controller
23 is U.S. sourced, number one. But, number two, a beacon
24 receiver is just that, it is a receiver. And under Category IV
25 of the license, it is a receiver. If it was not a receiver, it

1 would be characterized receiver/transmitter. But it is a
2 receiver. And, your Honor, I have learned a little bit more
3 about satellites than I ever thought I would. But a beacon
4 receiver does just that. It receives the beacon from the
5 satellite working in conjunction with a tracking controller.
6 The tracking controller simply moves the ground antenna that is
7 on the ground. The tracking controller, working in conjunction
8 with the beacon receiver, moves the antenna so that it can
9 actually track satellites and get the beacon. This is receiver
10 equipment. This fits under Category IV. It is still --
11 this -- this conduct, even with the beacon receivers, is, now,
12 lawful.

13 THE COURT: Well, when you say Category IV, let's look
14 at the regulation which is attached as exhibit 5 to your
15 submission.

16 MR. COFFIELD: If you look at the annex, your Honor,
17 that's at the very last page, and you look down in Section 4,
18 residential consumer satellite receive-only terminals.
19 Receiver equipment including, but not limited to, antennas,
20 receivers -- this is a beacon receiver. It is a receiver.

21 More importantly, your Honor --

22 THE COURT: Is this the type of thing that would be
23 used by consumers?

24 MR. COFFIELD: Yes, your Honor, it is. Your Honor
25 asks an appropriate question. And that's one of the more

1 significant parts of this.

2 The customer here is a smaller version of Comcast or
3 Time Warner. It is a company that's sole purpose is to provide
4 internet connectivity and communication to the general
5 population in Iran, something that Iran, the government of
6 Iran, seeks to jam.

7 And if you look in one of our other exhibits, your
8 Honor, we were able to obtain a memorandum from the government,
9 to banks, and to some other government controlled entities,
10 telling them to stop using satellite communication and to start
11 using hard wire communication.

12 We also have extraordinary family circumstances here,
13 your Honor. And I believe that the government -- the
14 government talks about the affidavit. And I think there may be
15 a misunderstanding, or some confusion in that the government
16 seems to take the position that Mr. Sarvestani's wife and child
17 can stay in Singapore until 2017, no matter what. And that's
18 not the case.

19 And I believe Mr. Masnan's affidavit addresses that.
20 And the problem being that if Mr. Sarvestani is not back, and
21 does not get that company to the point where his audit that
22 will occur early next year shows activity on behalf of the
23 company, then there is a high likelihood that the ICA,
24 Immigration Controlling Authority, would actually revoke the
25 residency, which contract Singapore has no control over.

1 THE COURT: Well, let me say, I can't -- you have
2 alluded now, several times, to what you have described as
3 "extraordinary family circumstances" related to the defendant's
4 immigration issues, both with respect to Canada and with
5 respect to Singapore.

6 And let me say that I don't view those circumstances
7 as extraordinary. In fact, there is nothing novel about a
8 defendant who has pleaded guilty to a crime and is awaiting
9 sentencing, there is nothing novel about defendants facing,
10 defendants and their families facing what are often tragic
11 circumstances relating to their immigration status. The most
12 typical scenario is deportation from the United States.

13 Now, this defendant is not a United States citizen, so
14 we're not talking about presence in the United States. We're
15 talking about access to other countries. But it is by no means
16 uncommon. In fact, it actually is common that a criminal
17 conviction results in the deportation of, sometimes, people who
18 have spent decades in the United States. It leads to family
19 separations in many instances. In other instances it leads to
20 spouses and children being required to go to a country that
21 they have never actually been to. So it's a frequent result of
22 a criminal conviction. There is nothing novel or unusual about
23 it.

24 While I'm sympathetic to the circumstances of Mr.
25 Sarvestani's family, I can't find that there is anything novel

1 or unusual about that. It is just not novel or unusual. In
2 fact, it is the opposite.

3 So, I wanted you to know that because you're placing a
4 lot of reliance on that argument, and it's not one that I find
5 persuasive.

6 MR. COFFIELD: Well, your Honor, it I can follow up,
7 with the Court's indulgence.

8 THE COURT: Yes.

9 MR. COFFIELD: It is a bit different here. As your
10 Honor has stated, there is no question that somebody who is in
11 the United States would have to be deported and leave the
12 United States. And I understand that position. Here, however,
13 we have a wife and child who are in a country under a temporary
14 residency program. They are awaiting residency in Canada which
15 is where they originally had decided that they were going to
16 move, from Dubai. But, once they were in Dubai, the problem
17 here is that these people, if this happens, will be going back
18 to Iran. And that is a circumstance that I think makes it
19 different, certainly, than the normal immigration deportation
20 that you have here in the United States.

21 We have got two people who are going to be forced to
22 go back to Iran, one who was a political prisoner in Iran, and
23 a child who has only visited there for less than the number of
24 times than you can count on your fingers. So we have got a
25 unique situation. Because we have got two completely innocent

1 people that will be impacted by that, in another country where
2 the residency is dependent here, but they would be going to a
3 country where I don't think anyone would argue that it's gonna
4 be extremely difficult for them, especially in Mr. Sarvestani's
5 situation.

6 May I, your Honor?

7 THE COURT: Yes. Go right ahead.

8 MR. COFFIELD: Your Honor asked us to address the
9 amounts. And I will say that there is an allusion to millions
10 of dollars. There were millions of dollars of trade that
11 happened with these companies, with these different companies.
12 That happened. It is perfectly legal. It is not illegal for
13 another citizen of another country to take other goods and sell
14 them to Iran. That is --

15 THE COURT: That's not the assertion that is made.

16 The assertion that is made is a substantial percentage
17 of the millions of dollars of commerce that you are talking
18 about was in US-made products. That's the assertion that is
19 made in the government's brief.

20 MR. COFFIELD: Your Honor, we have -- your Honor, we
21 have -- we have said, and I believe the government would
22 acknowledge, that it is several hundred thousand dollars over a
23 seven-year period. That's what the amount was.

24 Your Honor, for purposes -- I don't know if your Honor
25 wants me to -- the government seemed to want some clarification

1 on his Canadian situation. And I don't know if the Court wants
2 me to address that. I can do it very quickly.

3 THE COURT: What I understand from the papers is that
4 he has a limited amount of time to appear in Canada.

5 MR. COFFIELD: Correct, Judge.

6 THE COURT: In connection with a residency
7 application. And it's a very limited amount of time. It
8 expires, according to the defense, sometime over the next eight
9 or so days, by my calculation.

10 MR. COFFIELD: Yes, your Honor.

11 THE COURT: So that's my understanding of it. I
12 believe the government's response has been, well, we don't know
13 whether he could re-apply.

14 MR. COFFIELD: And I would, just for purpose of
15 clarification. If his application is denied, he could
16 re-apply. But as -- but to make clear, the application process
17 is about a five-year process. And the most significant point
18 there being his wife and child cannot make application, they
19 can not present their passport absent him. He is the primary
20 applicant, which means he must present the passport. His wife
21 and child cannot do that. They would not be able to go to
22 Canada, present their passports, and get their residency there.

23 Your Honor, I -- there -- I think we've addressed the
24 disparity in the sentencing. And we have given the Court a
25 number of cases that, significantly, there is more egregious

1 conduct that has occurred here and the defendants were
2 sentenced to less than Mr. Sarvestani has actually served.

3 And one of the cases that I was looking at that I
4 would highlight for your Honor is the Guillard case, where
5 Judge Ross sentenced Mr. Guillard in the Eastern District of
6 New York for conduct that occurred over a seven-year period
7 where there were exports to Cuba and Iran. And Mr. Guillard
8 had actually had an interview with the Department of Commerce
9 Export Enforcement about not exporting. So he was fully aware.
10 He was a U.S. citizen. It's a U.S. company. He owned the
11 company. The activity took place over a seven-year period.
12 Most of the arguments that were made were about the employees
13 who would suffer as a result of not being able to have their
14 business, general family considerations, the acceptance of
15 responsibility. But that case also included allegations by the
16 government that the defendant had obstructed. And the ultimate
17 sentence that was given there, and your Honor, the chart is a
18 little off, it says he was given a month. He was actually
19 given a month of incarceration and 6 months home confinement.

20 Finally, your Honor -- and I -- and I sincerely mean
21 this. And, again, Mr. Silverman and I, both, believe this
22 emphatically. Society is better off with Mr. Sarvestani out,
23 than in. The outpouring of support, the testimony to his
24 nature, to how he treats every human being with dignity and
25 respect, how he helps those in need of help, and the fact that

1 there are a lot of people that will suffer due to his continued
2 incarceration. And we respectfully ask that the Court follow
3 the recommendation of the probation office and sentence Mr.
4 Sarvestani to time served.

5 I beg the Court's indulgence.

6 Your Honor, Mr. Silverman has appropriately noted that
7 I think the government concedes that the vast majority of these
8 parts are still legal. If the Court wants further briefing on
9 this, further information about the select parts that have been
10 noted, we would be happy to provide that.

11 THE COURT: All right, I'll hear from you, Ms. Kovner.

12 MS. KOVNER: Your Honor, let me start with the issue
13 of the scope of the activities engaged in, or the illegal
14 export activities by the defendant's companies, and the issue
15 of the new regulation, or the general license as is related to
16 that.

17 Your Honor, I think the scope of the defendant's
18 business is best described in the PSR around paragraphs 15, 16,
19 and 17. And, basically, they lay out that the defendant's
20 companies were involved in substantial exports of U.S. made
21 parts to Iran. They were basically companies that procured
22 goods for Iranian companies. And many of those parts came from
23 the United States.

24 They were -- and then the PSR talks about several
25 specific transactions that Mr. Ghorashi was directly involved

1 in communications about. And those were the transactions
2 involving the parts that are discussed, the particular
3 satellite-related parts that are discussed in the PSR.

4 Those parts we understand to be parts that are used
5 for controlling satellites. And I think that Mr. Coffield's
6 response is, well, maybe the tracking receivers didn't come
7 from the U.S., they were being bundled with the other parts and
8 then shipped on, but maybe the tracking receivers were from a
9 different source.

10 I think the fact that these goods are being, you know,
11 various goods used to control satellites were being bundled
12 together and then sent on to an Iranian company, indicates that
13 these parts were collectively parts that were designed for
14 controlling satellites. That is -- the fact that a U.S. made
15 satellite part is being bundled with a tracking receiver to
16 control a satellite, and then sent on to an Iranian company
17 gives a pretty good sense to what these parts were being used
18 for.

19 In addition, I think the PSR describes what the
20 particular satellite piece from the U.S. was used for. And,
21 again, it is not a residential part. It is a part that is used
22 to control satellites, but not a part that falls within the
23 category of residential consumer satellite receive-only
24 terminals.

25 Your Honor, the other point about this is it is just a

1 kind of after the fact fortuity that the regulations have
2 changed somewhat to allow the shipment of certain kinds of
3 technology to Iran, after Mr. Ghorashi's conduct. In the
4 context of companies that were basically in the business of
5 providing goods to Iranian companies, some of the goods that
6 were provided turned out later to be legalized for export to
7 Iran. But that was not something that was in Mr. Ghorashi's
8 head. It was not something that was contemplated by these
9 businesses which were just profit-making entities to distribute
10 goods to Iran.

11 So, it may be relevant to the Court's consideration.
12 I don't think it is extremely relevant that, after the fact,
13 the U.S. has legalized some, but not all, shipments of
14 residential satellite reception technology to Iran.

15 With respect to value of the transactions in this
16 case, there was substantial discussion between the parties of
17 what an appropriate forfeiture amount was in this case. Over
18 the course of those discussions, we presented defense counsel
19 with evidence of a large volume of transactions involving these
20 companies to Iran. And there was sort of back-and-forth about
21 what the appropriate number was representing Mr. Ghorashi's
22 profits, his personal profits.

23 As your Honor knows, it is often difficult for us to
24 prove up a very specific dollar amount of what an individual
25 defendant got in this transaction. And this is an amount we

1 accepted based on a back-and-forth with the defendant about
2 what his profit was, and what we would be able to prove up as
3 his profit. But I think all of the parties are agreed this
4 doesn't represent the entire amount of money that these
5 companies -- I'm sorry, that the value of the goods that these
6 companies were shipping to Iran, which was quite significant.

7 The third, I think, issue your Honor raised is the
8 chart that the defendant had prepared showing below guidelines
9 sentences. It's a little bit hard for me to respond to those
10 cases without knowing substantially more about what happened in
11 those cases.

12 As your Honor knows, sentencing is an individualized
13 determination. Defense has certainly shown that, in some
14 cases, judges have found it appropriate to give some defendants
15 below guidelines sentences although, often, they are also quite
16 substantial sentences. Without knowing more about what
17 individual facts motivated the judges in those cases, it is
18 hard for me to compare it to Mr. Sarvestani's case. I think
19 the factors of greatest concern to the government here, your
20 Honor, are this is a defendant who was a leader in those
21 companies, who didn't need to be engaged in this at this time.
22 He was not under duress, wasn't doing this under some sort of
23 financial duress. Was not doing this at the direction of
24 others. So while it is hard for me to know all of the personal
25 circumstances of the defendants in these other cases, I think

1 those are factors of concern here. And they suggest that this
2 is not a defendant at the very bottom of the IEEPA ladder.

3 THE COURT: All right.

4 Mr. Coffield.

5 MR. COFFIELD: I beg the Court's indulgence.

6 Your Honor, again, I would simply emphasize that I
7 think there is a misunderstanding about what these parts are.

8 These parts are receiver parts. They're tracking
9 controllers, controller for an antenna on the grounded, not the
10 satellite.

11 I think the most -- the most that the government does
12 in its briefing is explains that you could take some of these
13 parts, and if you put them together with a bunch of other
14 things, you may be able to control a satellite. That is not
15 what is happening here. These are being sold to a company that
16 is using these things to receive satellite signals and then
17 take that information and give it to people who are the general
18 population of Iran. Which is something the United States
19 government has been supporting for years. I think that is a
20 significant point.

21 The other discussion that we have, which was there was
22 \$54,000 attributed to Mr. Sarvestani. There was no profit
23 involved in that. That company, in fact, was a losing company.
24 As we point out, he sold his interest in this company before
25 this ever occurred.

1 And one other thing, your Honor -- and I didn't
2 mention this earlier, I mention it now. Hopefully, we have
3 done an adequate job of expressing to the Court all of the
4 activity Mr. Sarvestani was involved in.

5 He was involved in a tremendous amount of commerce.
6 At one company alone in 2012, he did \$200 million in sales.
7 This is this is a blip on the radar screen. And the truth is,
8 your Honor, had he been thinking about this, I don't think this
9 would have ever happened. There wasn't any conscious thought
10 about this.

11 THE COURT: Mr. Sarvestani, is there anything you wish
12 to say before the Court imposes sentence?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Your Honor, I never thought, in my life, a
15 day would come that I shall be standing before a judge for
16 sentencing in a criminal matter. I am extremely disappointed
17 in myself. Not only because of the lapse in my judgment, but,
18 also, because I'm morally devastated at the thought of -- of my
19 actions.

20 I always thought I'm walking in the right path, and I
21 never will be lost. But, here I am today, and I'm totally
22 lost, and I have jeopardized whatever I built in my life.

23 I lost my reputation, which was one of my most
24 valuable assets.

25 I am in danger of losing my business, which is the

1 result of my 25 years of hard work.

2 And, worst of all, I failed to protect my family,
3 which is the most precious asset in my life.

4 I placed them, and their future, in great danger. And
5 with a simple word, the wrong decision, nearly destroyed my
6 whole life.

7 No words can express how guilty I feel, given my
8 family's current situation, that they may end up without a
9 home, or worse, a place to live. This being a tremendous
10 burden I have placed upon them, one which I can never forgive
11 myself for.

12 Your Honor, I can assure you that if I possessed the
13 knowledge I have today prior to all of this occurring, or if I
14 had an opportunity to go back in time, I would do everything in
15 my power to prevent such a gross negligence on my part.

16 I stand before you today ashamed, and embarrassed, and
17 humbly requesting for forgiveness. Not just for my family, but
18 from the Court for incurring the burden and costs of the
19 criminal case.

20 Thank you, your Honor, for giving me the opportunity
21 to express myself.

22 THE COURT: In deciding upon an appropriate sentence,
23 I have considered all of the factors set forth in Title 18
24 United States Code Section 3553(a), including the nature and
25 circumstances of the Mr. Sarvestani's offense, his personal

1 history and characteristics, the need for the sentence imposed
2 to reflect the seriousness of the offense, to promote respect
3 for the law, to provide just punishment, and to afford adequate
4 deterrence.

5 Beginning with the nature and circumstances of the
6 offense. As we have heard today, Mr. Sarvestani was a manager
7 and part owner of a company called Innovative Technology
8 Systems, or ITS. And he was a part owner of something called
9 Skylinks, FCZ. These companies are based in the United States
10 Arab Emirates. They procured goods in the United States and
11 elsewhere, and sold these goods to companies in Iran.

12 Because there is a trade embargo in place that
13 prohibits the sale of most U.S. made goods to Iran, the U.S.
14 made equipment at issue here was shipped through intermediary
15 destinations such as Dubai, Malasia, Hong Kong, and elsewhere,
16 in order to obscure the goods' true destination. The
17 defendant's companies did millions of dollars of transactions
18 with Iranian companies over many years. And a percentage, not
19 insignificant percentage, of that business involved the sale of
20 US-made products, including electronic equipment and including,
21 specifically, the satellite-related equipment at issue here.

22 The defendant is a highly sophisticated international
23 businessman. Indeed, his counsel has pointed out this morning
24 one of the defendant's companies had as much as \$200 million in
25 revenue in 2011, alone. There is also no doubt that the

1 defendant was well aware of the laws prohibiting the sale of
2 U.S. made goods to Iran. Indeed, in 2009, one U.S. supplier
3 explicitly warned the defendant, in writing, to ensure that he
4 complied with all U.S. export controls.

5 Instead, the defendant instructed his employees to
6 disguise the fact that his employees were selling this
7 merchandise to Iran. He warned his employees to be careful in
8 relaying inquiries about the merchandise from the Iranian
9 buyers to the U.S. suppliers. They were told to, quote "be
10 very careful about this subject" unquote, to address the
11 queries by telephone, and to never use e-mail.

12 As a result of the defendant's conduct, his employees
13 lied to U.S. customs inspectors as to the ultimate destination
14 of merchandise.

15 There is also evidence that the defendant was kept
16 apprised of the progress of the illegal shipments, and that he
17 monitored the illegal shipments.

18 The defendant's conduct took place over a number of
19 many years. Why the defendant engaged in this conduct, that he
20 knew to be illegal, is largely a mystery. He is a millionaire
21 many times over. And these transactions, as defense counsel
22 has pointed out today, resulted in either no profit or very
23 little profit.

24 The defendant argues that he only sold satellite
25 communications for the general population of Iran to use to

1 connect to the internet.

2 However, as the government has pointed out, some of
3 the equipment at issue here has a role in monitoring,
4 positioning, and controlling satellites and satellite antennas.
5 In any event, the new regulation that the defense has cited to
6 me was, concededly, not in effect during the many years that
7 equipment was shipped, by the defendant, to Iran.

8 And, accordingly, I cannot place reliance on the fact
9 that, recently, a regulation has come into effect which permits
10 the export of certain electronic equipment to Iran.

11 I conclude that the defendant engaged in extremely
12 serious criminal conduct. The trade embargo against Iran
13 reflects the fact that it is a nation that actively supports
14 terrorism. The trade embargo has been a critical element in
15 the international community's efforts to pressure Iran to end
16 its support of terrorism.

17 Here, this defendant knowingly and intentionally chose
18 to violate U.S. law designed to enforce the trade embargo. He
19 took steps to actively conceal that violation and to mislead
20 U.S. customs inspectors. The reasons for the defendant's
21 actions are not clear, and appear not to be financial in
22 nature, given the paltry amount of profit, particularly when
23 compared to the scope of his international commercial
24 enterprises.

25 With respect to the defendants's personal history and

1 characteristics. He is 46 years old and grew up in Turan. He
2 has a bachelors degree from an Iranian university and an MBA
3 from the University of Liverpool. He created a successful IT
4 company in Iran.

5 And in 2000, the defendant sold his interests in the
6 IT company and he and his wife relocated to Dubai.

7 In Dubai, the defendant successfully pursued a number
8 of businesses. He formed ITS, which was originally an IT
9 company. The company later evolved into a general trading
10 company that did transactions in commodities such as steel and
11 edible oils.

12 The defendant later started a food distribution
13 company and a chain of pizza restaurants. He later set up
14 Skylinks, with a \$1.5 million dollar investment.

15 In 2012, the defendant and his family moved to
16 Singapore. There, he started a company that builds residential
17 accommodations for workers on off-shore oil platforms.

18 The defendant has no criminal record. And he has
19 already been incarcerated for approximately 10 months.

20 As we have discussed this morning, the defendant has
21 argued that further incarceration will jeopardize his and his
22 family's ability to maintain residency in Singapore, and to
23 obtain residency in Canada.

24 As I have said, while I'm very sympathetic to the
25 immigration issues faced by the defendant and his family, they

1 are not, in my judgment, factors that should be determinative
2 or dispositive of his sentence.

3 As I have said, every day in this courthouse
4 defendants plead guilty to offenses that will have immigration
5 consequences; generally, deportation from the United States to
6 whatever country it is they are a citizen of. And, in many
7 instances, the countries they are a citizen from are not
8 desirable countries in which to live. In many instances, the
9 defendants and their families have been residents in the United
10 States for decades. Accordingly, deportation has a devastating
11 effect on the defendant and on the defendant's family.

12 While it is tragic in every case, as I have said,
13 there is nothing novel about that consequence of engaging in
14 criminal conduct.

15 The guidelines recommend a sentence of 57 to 60 months
16 imprisonment. The probation department has recommended a
17 sentence of time served, which would be about 10 months. The
18 defense seeks a sentence of time served, and has suggested a
19 \$25,000 fine.

20 The government asks for a guidelines sentence.

21 With all of these facts and considerations in mind,
22 I'll now describe the sentence I intend to impose, and then
23 I'll ask the parties if there is anything further they wish to
24 say.

25 With respect to imprisonment, I intend to grant a

1 variance from the applicable guidelines range. I will grant a
2 variance in large part based on the case law defense counsel
3 has submitted, setting forth typical sentences in cases
4 involving export violations. Many of the cases cited by the
5 defense involved equipment that could be used for military use.

6 The sentences imposed in these cases were,
7 nonetheless, shorter than the guidelines range applicable here.
8 Now, I do tend to agree with the government's point that it is
9 difficult to apply all of the cases that are cited by the
10 defense, because we don't know all of the relevant
11 circumstances. We don't know what the role in the offense was
12 of the particular individual, we don't know where in the
13 hierarchy they stood, we don't even know whether they
14 cooperated and received a 5K letter from the government.

15 So there is any number of possible explanations as to
16 why the sentences are what they are.

17 But there are enough cases cited to me to make me
18 believe that I should give him weight in determining whether a
19 variance is appropriate here.

20 Now, having said that, intentional criminal conduct of
21 this sort, committed by a highly sophisticated businessman,
22 cannot be condoned. The sentence imposed must be sufficient to
23 serve the objective of general deterrence. The message cannot
24 go out that the U.S. trade embargo against Iran can be violated
25 without fear of serious consequences.

1 Under all of these circumstances, I intend to impose a
2 sentence of 30 months imprisonment.

3 I do not intend to impose a term of supervised
4 release, because I expect the defendant will be deported after
5 his term of incarceration is completed.

6 The guidelines recommend a fine of between \$10,000 and
7 \$100,000. In light of the defendant's financial assets, I
8 intend to impose a fine of \$100,000, which will be due
9 immediately.

10 I intend to impose a 100-dollar special assessment.

11 With respect to forfeiture I have entered a consent
12 preliminary order of forfeiture.

13 Is the government seeking any order with respect to
14 forfeiture?

15 MS. KOVNER: No, your Honor.

16 THE COURT: Mr. Coffield, is there anything further
17 you wish to say?

18 MR. COFFIELD: I simply state for the record, your
19 Honor, the chart we gave you noted who cooperated and who did
20 not cooperate. And, again, I would point to the xxx the Ark
21 case that closely tracked this, in that you had an owner who
22 was -- an owner who was exporting to Iran and to Cuba, was a
23 U.S. citizen, had circumstances more egregious than this,
24 obstructed justice, and was sentenced to 30 days incarceration,
25 and 6 months home confinement and I will respectfully request

1 that the Court reconsider its sentence.

2 THE COURT: Well you have said that your chart
3 indicates who cooperated, and who did not. I don't know how
4 you can possibly know that. Are you referring to the fact that
5 some of the cases are sealed, and some are not; is that what
6 you are referencing?

7 MR. COFFIELD: Yes, your Honor. There are some cases
8 that are sealed. We assume that the cases that were sealed
9 were cooperators. And we also assume, we also note from some
10 of the records that were filed, that there were 5K motions, and
11 Rule 35 motions, so we took all of that into consideration,
12 your Honor.

13 THE COURT: Well, as I have said, you may be right
14 that the sealed cases are cooperators, that I suppose that is
15 possible. The point is, that we don't have enough facts to
16 derive more from these cases than I have. And I will tell you
17 that, but for your submission indicating the types of sentences
18 that have been imposed in the past, I would likely have not
19 granted the variance that I did.

20 So I have given the cases that you have cited to me as
21 much weight as I feel I possibly can, given that we just don't
22 know all of the circumstances in each of those cases. And when
23 it comes to sentencing, those facts matter. It matters where
24 in the hierarchy a defendant was; it matters the nature of the
25 equipment that was involved; everything matters. And while you

1 have given me some new information about the cases, I don't
2 have the breadth of information about these cases that I get
3 when I sentence a defendant in one of my own cases. And so I
4 have given as much weight to the case law you have cited to me
5 as I can, given that I don't know all of the facts set forth in
6 those cases.

7 At the end of the day, what we have is someone who was
8 highly sophisticated, was warned of the law -- in writing --
9 and for reasons that we don't know, chose to disregard it.

10 I have no doubt that this experience is likely
11 sufficient to deter Mr. Sarvestani from future violations of
12 the law. But, I have to be aware of my responsibility to
13 communicate to others who may be now violating the law, or who
14 may be considering violating the law, that they will receive
15 serious consequences if their violation of the law is detected.

16 In my judgement a sentence of 10 months is not
17 sufficient to serve the objective of general deterrence, and
18 that is why I have decided that a longer sentence is necessary.

19 Mr. Sarvestani, anything further you wish to say?

20 THE DEFENDANT: No. No, sir.

21 THE COURT: Ms. Kovner, anything else from the
22 government --

23 I'm sorry, Mr. Coffield, did you have something?

24 MR. COFFIELD: If the Court could make a
25 recommendation for FCI Petersburg, Virginia, your Honor.

1 THE COURT: All right.

2 Ms. Kovner, anything else from the government?

3 MS. KOVNER: No, your Honor.

4 THE COURT: Mr. Sarvestani, for the reasons I just
5 stated, it is the judgment of this Court that you be sentenced
6 to 30 months imprisonment, ordered to pay a fine of hundred
7 thousand dollars, special assessment in the amount of \$100.

8 I do recommend to the Bureau of Prisons that you be
9 incarcerated at the facility in Petersburg.

10 I am required to advise you of your appeal rights.

11 You can appeal your conviction if you believe that
12 your guilty plea was unlawful or involuntary, or if there was
13 some other fundamental defect in the proceedings that was not
14 waived by your guilty plea.

15 You also have a statutory right to appeal your
16 sentence under certain circumstances. With few exceptions, any
17 notice of appeal must be filed within 14 days of judgment being
18 entered in your case.

19 Judgment will like likely be entered tomorrow. Your
20 attorneys will discuss, with you, whether or not you wish to
21 file a notice of appeal. If you are not able to pay the costs
22 of an appeal, you may apply for leave to appeal in forma
23 pauperis.

24 If you request, the clerk of the Court will prepare
25 and file a notice of appeal on your behalf.

1 Is there anything further?

2 MS. KOVNER: Not from the government, your Honor.

3 MR. COFFIELD: No, your Honor.

4 THE COURT: All right.

5 We'll take a brief adjournment.

6 (Adjourned)

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